IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 736 OF 1993

Mushtaq Ahmed Rashid Shaikh
& Anr. ..Appellants

versus

Baban G. Ambekar & Ors. ..Respondents

Mr. S. G. Deshpande for the Appellants.
Mr. A. Joshi for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 1ST APRIL,2005

ORAL ORDER :

1. Heard Advocate for the Appellants and the Respondents.

2. This Appeal is filed jointly by the owner of the vehicle and Insurance company challenging the order of the MACT, Satara, dated 21.6.1993 holding the appellants jointly liable for payment of Rs.2,85,000/- as compensation to the respondents - claimants.

3. The claimants were parents, wife and brother

of the deceased. Accident took place on 23.1.1987 at 11.30 p.m. Deceased Sanjay was going on motor-cycle No. MXX-1389 towards Povai Naka from Satara city. His friend was on the pillion . The deceased took curve near the spot known as "Char Bhinti" when he saw an autorickshaw was coming from the opposite direction. Deceased gave a signal by dimful light signal and tried to take his vehicle to the left side to avoid headon collision, but the autorickshaw suddenly came on the left and dashed against motor cycle. The deceased sustained serious injuries. He was taken to Civil Hospital, Satara, but ultimately he succumbed to the injuries on 25.1.1987. It is in this background, claim petition came to be filed and it was allowed to the extent, referred above. Hence, this Appeal.

4. Counsel for the appellants, firstly, contended that the evidence of the eye witnesses and of the autorickshaw i.e. pillion rider was not sufficient to come to any conclusion as to where exactly the accident took place. Secondly, the evidence of the said witness was contradictory to the panchanama. Thirdly, the evidence of the autorickshaw driver was more than consistent and in conformity with the panchanama and therefore considering these facts the findings of the Tribunal that autorickshaw driver was negligent, were wrong.

He also contended that the Tribunal has discussed the evidence at length and has come to a conclusion as to where the accident took place and who was responsible. Both these conclusions were wrong so far as the negligence of the autorickshaw driver is concerned. Further he also contended that quantum of compensation was not properly decided by the court and it was on higher side. Therefore, according to him the entire judgment of the trial court was liable to be quashed and set aside and /or alternatively the quantum was liable to be reduced.

5. Counsel for the appellants also on the basis of the panchanama and evidence, prepared a map, and submitted it to the court. However, during arguments, it was found that it was necessary to get the map showing the land marks, therefore an order was passed by me calling upon the concerned Police Station to prepare a map and send it to this court. Accordingly the said map was sent. Thereafter both the Advocates advanced arguments on the basis of this map and this map can be treated as basis for this Judgment.

6. The situation as disclosed by the map is necessary to be described here. There is a road in Satara known as Rajwada Road, this is running East West, Powai Naka is to the East and Rajwada Road is

to the West, Bagade Hospital and Wireless Office and Charbhinti are on the South side of the said road. Similarly Nagar Palika Shopping Center, Datta Mandir and Kamani Haud are also on the South, Kesarkar Peth is also to the South and the road from Rajwada Road goes to Kesarkar Peth, Wireless Office and Ajinkya Mutton Shop are to the North.

7. Anand Chavan was the eye witness of the accident because he was pillion rider. He has stated that on 23.1.1987 he was near Samartha Mandir (not shown in the map by the police). It was about 10 to 10.15 p.m. He was going to Naka (most probably Powai Naka) to his tailoring shop and Sanjay the deceased came to his motor cycle to the spot where he was standing, he gave him lift and the witness Anand Chavan sat on the pillion seat, they passed Datta Mandir and came up to Mutton shop of the corner, one rickshaw came with one light only. They saw rickshaw from the distance of 10 to 15 feet. Sanjay slowed down the speed and tried to take his motor cycle on one side but the rickshaw without taking a turn at the circle came directly by wrong side and gave dash to the right hand side of the motorcycle. This is the evidence given by the witness about the manner in which the accident took place. The driver of the rickshaw was examined by the opponent, his name is Shahnawaj. He has stated

that the accident took place between Bagade Hospital and Wireless station at about 11 p.m. He was coming from Powai Naka to Kesarkar Peth. He came near Bagade Hospital. One Suzuki motorcycle came from opposite direction in high speed and motorcycle came on his rickshaw, he swerved his autorickshaw to the left but the handle of the motorcycle dashed agtainst the bar which is behind the driver seat on the right side. This is the narration given by the driver of the autorickshaw about the accident.

8. The Tribunal has considered both these narrations and came to the conclusion that it was a negligence of the autorickshaw driver. Paragraphs 8 and 9 of the judgment, which are relevant, reads as under:

> **"8. Thus, the position that emerges after re-constructing the events is that, the deceased Sanjay along with his friend Anand Chavan was going from Rajawada towards Povai-naka-via- Char Bhinti square. It may be stated here that, Anand Chavan's evidence shows that the spot where he met Sanjay is such that, there was no need to go towards Rajawada and that the two motor-cyclists could have straight away come to Powai naka - via - adalatwada Road. But according to Anand Chavan they had gone to a friend near Rajawada. It is, therefore, clear that they were going from Rajawada towards Povai-naka. It is pertinent to note that, it is also not the contention of the Opponent Nos.1 and 2 that, the motor-cyclists was coming from Adalatwada. That apart Anand Chavan has specifically stated that, they were going from Rajawada side to Povai-Naka.**

> **9. In any event, the accident had taken place to the North of Char Bhinti square. It may again be noticed here that, from Char Bhinti square Rajawada is towards West, the Adalatwada road goes towards South and Povai-naka road goes towards North. The accident had admittedly taken between Char Bhinti square and Povai Naka. Bagade Hospital is on that road. It is also clear from the evidence on record that, Bagade Hospital is about 500 feet from Char Bhinti square. The petitioners have mentioned this spot of the accident, as being one near Bagade hospital, althogh their version is that, the accident had taken place just near the Char Bhinti square. It is likely that, Bagade Hospital being the prominent place of that area, the said Hospital came to be mentioned in preliminary paragraph, where details of the accident have been given. In the spot panchanama Shahanavaz Shaikh, who had shown the spot mentions about the Wireless Station. That Wireless Station appears between Bagade hospital and Char Bhinti square. The evidence Shahanavaz Shaikh is extremely material. He has stated in his examination-in-chief itself that the circle (fountain) is 10 feet from the spot of the accident. That means the accident had taken place just near Char Bhinti square was about 10 to 15 feet ahead. Shri S. R. Bhosale, the learned Counsel for the opponent Nos. 1 and 2, argued that this was inadvertent statement on the part of the Opponent No.1 Shahanavaz and as such not much importance can be attached to it. However, I do not agree with the said submissions of Shri Bhosale. As a matter of fact, his another statement in the cross-examination is also extremely material. He has stated that the accident took place about 10 to 15 feet from the Mutton shop. It is not disputed before me that, the mutton shop is just on the corner of the Char Bhinti square. That clearly shows that, the accident took place just near Char Bhinti square."**

Counsel for the appellants therefore contended that the aforesaid observations and conclusions of the Tribunal are wrong and contrary to the record.

According to him the accident took place in the manner in which it was deposed by the driver of the autorickshaw and it was fault and negligence of the deceased Sanjay who dashed against Autorickshaw.

9. I do not find any force in the submissions made by the counsel for the appellants in this regard. All these contentions can be negatived on the basis of the map submitted by the police. Therefore evidence of the rickshaw driver has to be scrutinized with reference to this map. I have already noted that Powai naka is to the East and the road leads to Rajwada to the South there is Bagadia Hospital Wine shop and to the North of the Road there is wireless office and mutton shop. If autorickshaw was coming from Powai Naka and it wanted to go to south i.e. towards Kesarkar Peth road then the autorickshaw would be on the left side of the road. Sanjay was going by motor cycle from the West towards Powai Naka and therefore he would be to his left. Therefore both the vehicles would be to their left. Sanjay did not want to go towards Kesarkar Peth, therefore he had no business to take a right turn as per the evidence of auto rickshaw driver and the autorickshaw driver did not want to go to the right i.e. towards the road going to North from wireless office, therefore he had no business to take a right turn. If autorickshaw was

proceeding from the left of the road and wanted to go to Kesarkar Peth, then autoricksaw was not required to take round around the circle and in that case there would have been no occasion for any dash of the two vehicles at all.

10. However, admittedly there is a dash between two vehicles and right side of the motor cycle is damaged and affected by this dash. Therefore what is clear is the autorickshaw driver is not telling the truth and the whole truth. As against this, what is stated by Anand Chavan is that Sanjay and he were coming from West i.e. direction from Rajwada Road and going towards East Povai Naka, they came to the mutton shop which was and is rightly shown in the police map to the northern side. Then he has stated when they came near the circle, this circle appears to be between Bagade Hospital, wireless office and if the autorickshaw is coming from East i.e. from Powai Naka and wants to go to North then it has to take a turn to the circle. However, what Anand has stated is that autorickshaw without taking turn to the circle came to them by the wrong side and gave dash to the right hand side of the motorcycle. Therefore what is clear is autorickshaw coming from East, he wanted to go to the road which was abutting wireless office and going to North, he was required to turn around the circle but he did

not take turn and directly entered the said road and therefore he gave dash to the right side of the motorcycle which was coming from West and wanted to go straight.

11. In the cross examination Anand has stated that the road comes from Rajawada and Adaltwada meet on the Naka where there is a ’Karanja’ and from there while we go to Powai Naka on the right side is Bagade Hospital, one road goes downwords towards Geeta Bulding from the Bagade Hospital and on that turning there is a wireless station of the police. Then he has stated that mutton shop is in front of Karajia and has further stated right hand portion of the autorickshaw hit on the right hand side of the motorcycle. The suggestion was put to him, which he denied that accident took place near Bagade Hopspital, but according to him i took place near Awale Wine shop which is about 15 to 20 feet from mutton shop. (This Awale Wine shop is shown in the green in police map and the mutton shop is shown in yellow, they are opposite each other).

12. Even driver in his evidence has stated that the circle is 10 feet from the spot of the accident and therefore it is clear that circle "Char Bhinti" i.e. referred to as between Wireless Station on the North and Bagadia hospital on the south. This

witness has stated in cross examination that the distance between Karanjia and mutton shop is 20 feet and the accident took place about 10 to 15 feet away from mutton shop.

13. Therefore, when from the evidence of the eye witness and the autorickshaw dirver spot of the accident is so rightly fixed by the trial court, then it is clear that it was the mistake of the autorickshaw driver that he directly wanted to go to the road on the North passing by the side of Wireless Station without taking a round around the circle. If the accident had taken place at that place then only right side of motorcycle and right side of autorickshaw could get damaged. Since the damage to the motorcycle is on the right side, the trial court rightly concluded that it was a negligence of the rickshaw driver, the findings of the Tribunal are not required to be set aside, in that regard.

14. The next question that was raised by counsel for the appellants was regarding the quantum. According to him the Tribunal took Rs.1,500/- as dependency and applied multiplier of 14. The Tribunal also took into consideration the age of the deceased Sanjay as 23 years. Counsel for the appellants contended that age of the parents i.e.

respondent Nos. 1 and 2 at the time of the application i.e. age of the father 57 years and age of mother 50 years and therefore multiplier of 8 should have been applied. Because according to him while fixing compensation in such a case the age of the parents was the criteria. He also contended that the deceased would have been married and his dependency would have reduced. There is considerable force in this arguments. Father was 57 years of age and the mother was 50 years of age at the time of claim petition, therefore the multiplier of 9 should have been applied instead of 14. Out of Rs.1,500/- looking to the status and the business of the family contribution of the deceased towards himself has to be taken as Rs.300/- per month, therefore dependency comes to Rs.1,200/- per month to the family., i.e. Rs.1,200/- x 12 x 9 = 1,29,600/-. Tribunal has awarded Rs.10,000/- towards loss of love and affection and Rs.2,000/- towards medical treatment, funeral expenses etc. That does not appear to be proper, Rs.20,000/- and Rs.5,000/- should have been awarded on that counts, therefore Rs.1,29,600/- + Rs.20,000/- + Rs.5,000/- comes to Rs.1,54,600/-, therefore claimants would be entitled to Rs.1,54,600/-. I therefore pass the following order:

ORDER

. Appeal is partly allowed.

. Compensation awarded is reduced to Rs.1,54,600/-. Rest of the order to remain as it is. In view of this, no order as to costs.

1.04.2005 (D.G. DESHPANDE, J.)